

**PT 98-66**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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CHICAGO HEALTH OUTREACH, INC.

Applicant

v.

THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

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Docket #

~~94-16-1421~~

Parcel Index #

~~14-17-201-009~~

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Mark J. McCombs appeared on behalf of Chicago Health Outreach, Inc.

Synopsis:

The hearing in this matter was held on December 10, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not Cook County Parcel Index No. 14-17-201-009 qualified for exemption from real estate taxation for all or part of the 1994 assessment year.

Dr. Karen Batia, associate director of residential mental health programs for Chicago Health Outreach, Inc. (hereinafter referred to as the "Applicant") and Mr. Leonard M. Grandstart, acting chief financial officer of the applicant were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned the parcel here in issue during all or part of the 1994 assessment year; and finally, whether the applicant was either in the process of adapting this parcel for charitable use or actually used said parcel for charitable purposes during all or part of the 1994 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned this parcel and the apartment building thereon during the period November 14, 1994, through December 31, 1994. It is further determined that the applicant leased this parcel and the building thereon for profit during the period November 14, 1994, through November 30, 1994. Finally, it is determined that the applicant was in the process of adapting this parcel for charitable use during the period December 1, 1994, through December 31, 1994.

It is therefore determined that this parcel and the buildings thereon qualify for exemption for 8% of the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department Of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for any portion of the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On July 24, 1995, the Cook County Board of Appeals transmitted to the Department an Application for Property Tax Exemption To Board of Appeals concerning the parcel here in issue and the building thereon for the 1994 assessment year. (Dept. Ex. No. 2)

3. On September 6, 1996, the Department advised the applicant that it was denying the exemption of this parcel for the reason that it was not in exempt use during 1994. (Dept. Ex. No. 3)

4. On September 25, 1996, the applicant's attorney requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on December 10, 1997, was held pursuant to that request.

6. The applicant acquired the parcel here in issue by a warranty deed in trust dated November 14, 1994. The grantee of this deed was the Uptown Bank of Chicago, Trust No. 94-112. (Dept. Ex. No. 2F)

7. The trust agreement for Uptown Bank of Chicago, Trust No. 94-112, provides that the applicant is the beneficiary of that land trust. (Dept. Ex. No. 2G)

8. The parcel here in issue is improved with a three-story brick apartment building with a basement. Also, there is a 6 stall brick garage located behind the building. The building is commonly known as 4730 North Winthrop Avenue, Chicago, Illinois. (Tr. p. 17, Dept. Ex. Nos. 2E & 2M)

9. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois on July 19, 1991, for purposes which included, in part, the following:

. . . to promote and provide social services and care to members of the community including but not limited to the homeless, indigent, and low income individuals and families. These purposes are only to be provided to the extent and in such manner that such purposes constitute exclusively charitable, educational, scientific, literary or religious purpose within the meaning of Section 501 (c) (3) . . . of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

10. When the applicant acquired the building on this parcel on November 14, 1994, there still were tenants of the former owner living in the building. These tenants of the former owner were living there pursuant to oral week to week or month to month leases. (Tr. pp. 45 & 46)

11. The applicant received a partial credit at the closing, for rent paid by these tenants to the former owner for the month of November 1994. (Tr. pp. 46 & 47)

12. On November 11, 1994, an attorney for the applicant wrote letters to the tenants of the former owner advising them that effective November 14, 1994, the property would be sold.

The letter also gave them notice to vacate their apartments on or before December 14, 1994. (Tr. pp. 47 & 48, Appl. Grp. Ex. No. 10)

13. Beginning in late November or early December 1994, the applicant cleaned and began to adapt the common areas of the building. As the apartments were vacated, the applicant went in and cleaned, painted, and repaired each apartment so that it would be ready for the operation of the applicant's program. (Tr. pp. 45 & 46)

14. The first clients of the applicant's program moved into the building during January 1995. (Tr. p. 60)

15. Beginning in January 1995, the applicant used the first, second, and third floors of the building on this parcel for its Assertive Community Treatment program or ACT program. (Tr. p. 17)

16. When the ACT program was fully utilized there were 15 participants in that program. (Tr. p. 17)

17. The persons in the ACT program are individuals who may have been homeless and who have a severe psychiatric illness that requires a highly structured living environment. These individuals are referred to the applicant by the Illinois Department of Mental Health and Developmental Disabilities local community mental health center. These are individuals who previously lived in state run psychiatric facilities most of their lives and who have not been able to maintain residences in the community. (Tr. p. 17)

18. The ACT program is staffed 24 hours a day by two mental health professionals. The purpose of this program is to help people maintain their living environment in the community. The applicant's goal in this program is simply to keep people out of the hospital for as long as possible. Generally persons in the ACT program who live in this facility will be there for a long time. (Tr. p. 18)

19. The applicant charges a service fee of \$260.00 per month to residents in the ACT program. This fee goes toward the costs of running the case management services that the applicant provides to the residents on site. (Tr. p. 19)

20. Each of the participants in the ACT program has a representative payee for their Social Security benefits. This representative payee is the Community Counseling Center of Chicago (also known as C4). C4 collects each participant's Social Security payments and pays \$260.00 over to the applicant. (Tr. p. 19)

21. The participants in the ACT program are allowed to participate and to continue to participate in that program even if they are unable to pay the \$260.00 monthly fee. (Tr. pp. 20 & 22)

22. There is staff in the building to participate in groups with the residents. The staff is also present to provide medication management, individual counseling, to run activities for the residents, and to help the residents in their daily living skills. This staff consists of two persons on duty at all times. The staff works in eight-hour shifts, three shifts per day. There also are two crisis counselors who live in the building on this parcel. The crisis counselors are on call overnight, ten nights out of every two week period. (Tr. pp. 19 & 20 and 22 & 23)

23. The ACT program in the building on the parcel here in issue has a supervisor, who is a clinician with a master's degree. The ACT program also has 5 mental health workers and case managers who staff the 24-hour shifts. There also is a nurse who works in this program eight hours a week. (Tr. pp. 23 & 24)

24. The crisis counselors who live in the building are Sandra Diorit who lives in apartment No. 28 and Mark Sibella who lives in apartment No. 38. When they are on call at night, they are called out to assist with the medical or psychiatric emergencies of the program participants. On an average of one or two nights a month there is an emergency which makes it necessary for the crisis counselor to be called out. (Tr. pp. 30-32)

26. The ACT participants' daily schedule would begin with medication management. They would have breakfast and then pack a lunch. This would be followed by individual counseling or someone might help them take care of their apartment. They might have one of the staff help them with their laundry or perhaps personal hygiene. Around noon they would go to Community Counseling Center of Chicago where they would spend two to four hours. They might see their psychiatrist there or perhaps work with their case management team. They would then return to the house on this parcel around 4:00 P.M. At that point, they might receive more medications, perhaps receive counseling, or participate in a group. They would then have dinner. After dinner they might have some leisure time or might perhaps participate in a group. (Tr. pp. 37 & 38)

27. During the period December 1, 1994, through all of 1995, the basement of the building on this parcel was used for storage of property which belonged to the former owner of the property, such as furniture and other items. (Tr. p. 61)

28. During the period December 1, 1994, through 1995, four of the stalls in the six-stall garage were used for the storage of program materials and the live-in staff were each assigned a stall. (Tr. p. 27)

29. During the fiscal year ended June 30, 1995, the applicant's income included State of Illinois grants and contracts totaling \$216,870.00, Program Service Fees of \$15,437.00, and MRO Service Revenue of \$290.00. The applicant's total income for that period was \$232,597.00. (Appl. Ex. No. 12)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In the case of People v. Chicago Title and Trust Company, 75 Ill.2d 479 (1979) the Illinois Supreme Court held that the holder of the beneficial interest in an Illinois land trust was the owner of the property for real estate tax purposes.

I therefore conclude that the applicant is the owner of the parcel here in issue for real estate tax purposes during the period November 14, 1994, through December 31, 1994.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois

Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. Based on the foregoing findings of fact, I conclude that since the applicant waives or reduces the \$260.00 per month program fee in cases of need, and since the persons admitted to the applicant's ACT program are admitted on referral from the Illinois Department of Mental Health and Developmental Disabilities, that the benefits derived are for an indefinite number of persons, that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits. Since the applicant is an Illinois General Not for Profit Corporation, I conclude that it has no capital, capital stock, or shareholders, and does not profit from the enterprise. From a review of the applicant's financial statement, I conclude that the applicant's funds are mainly derived from public and private charity and are held in trust for the objects and purposes expressed in its charter.

I therefore conclude that the applicant is a charitable organization.

The Illinois Courts have consistently stated the general principle that the use of property to produce income is not a charitable or an exempt use, even though the net income is used for charitable or exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2<sup>nd</sup> Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial



whether the owner makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934). Consequently, since the applicant in this case received credit at the closing for rent paid by the tenants of the seller, I conclude that the applicant leased this parcel and the building thereon for profit to the tenants of the former owner during the period November 14, 1994, through November 30, 1994.

I therefore conclude that this parcel did not qualify for exemption during the period November 14, 1994, through November 30, 1994.

Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (1987). In this case, the applicant, as soon as it acquired the parcel here in issue, gave the tenants of the former owner notice to vacate the apartment building on this parcel. It then immediately proceeded to clean up and adapt the common areas of the building. As the tenants of the former owner vacated the building, the applicant went in and cleaned up the apartments, repaired them, and adapted them for exempt use in the applicant's ACT program. In January 1995, the applicant began to move ACT participants into the building on this parcel.

Consequently, I conclude that this parcel and the building thereon were in the process of adaptation for charitable use beginning on December 1, 1994, through December 31, 1994.

I therefore recommend that Cook County Parcel Index No. 14-17-201-009 and the buildings thereon be exempt from real estate taxation for 8% of the 1994 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
September 23, 1998